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Via E-mail to jking@water.nv.gov

Jason King, P.E.,
Acting Nevada State Engineer
Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, Nevada 89701

Re: Comments by NV Energy

Dear Mr. King:

These comments are submitted by NV Energy to endorse certain proposed legislative changes to NRS 533.370, as posted on the Division of Water Resources website, to address issues which have arisen in the wake of the *Great Basin Water Network* case.

As an initial matter, NV Energy does not support the proposals set forth in **Versions 2 and 3** for several reasons, the most important of which is that we believe there is a significant danger that if the proposals are rejected by Legislature, the rejection will support an argument that the lack of action within one year does render the applications invalid, and worse yet, does call into question the validity of a permit or certificate based on an application not acted on within one year. *See Del Papa v. Board of Regents*, 114 Nev. 388 (1998).

NV Energy does support the legislative proposals set forth in Version 1 and partially supports the changes set forth in Version 4, with additional suggestions which are set forth below.

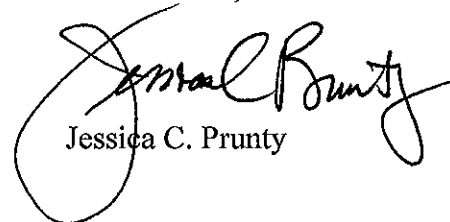
Version 1: It is our opinion that amending the *transitory* provision of the 2003 amendment would be the cleanest and most simple way to ensure that the 2003 amendment, stating that applications that have not been acted upon within one year are still valid, would apply retroactively to all applications on file with the State Engineer. Thus, NV Energy endorses this approach. We also believe that the Legislative Counsel Bureau would be more receptive to accomplishing the objective by way of this approach.

Version 4: This proposal would amend 533.370(3) and 533.370(8). For the same reasons set forth above, we do not recommend directly amending 533.370(3) to include retroactive application language in the body of the statute. Rather, we recommend amending the transitory language of the 2003 bill, as in Version 1.

Regarding the component of Version 4 that would amend 533.370(8) to re-notice and re-open the protest period for certain inter-basin transfer applications, NV Energy supports this language, in part. It is our opinion that the proposed amendment to (8)(d) addresses the due process concerns of interested persons who did not file a protest after the initial publication of an inter-basin transfer application, as articulated by the Nevada Supreme Court in the *Great Basin Water Network Case*, while at the same time providing a “trigger” for re-noticing and re-opening of the protest period. Without such trigger language, the State Engineer will be placed in the position of having to immediately re-notice and re-publish old applications, even if a hearing will not be held in the foreseeable future. If enough time lapses between that new protest period and the State Engineer taking action, it is highly likely that another protest period will have to be opened at that time.

NV Energy does not support the proposed section 533.370(8)(e) setting forth retroactive application language. As previously explained, we recommend that this type of retroactive application language be part of the transitory provisions of the amending legislation. Also, as the language suggested in 8(e) reads, it might be interpreted to require re-opening of permitted and certificated rights; thus, as an alternative, NV Energy suggests that additional language be added to the transitory provision to clarify that re-noticing and re-opening of the protest period does not apply to any application that the State Engineer has already approved.

Best Regards,
DYER, LAWRENCE, PENROSE,
FLAHERTY, DONALDSON & PRUNTY



Jessica C. Prunty

cc (via e-mail): Susan Joseph-Taylor, DWR Chief Hearing Officer
Renee Lequerica, Esq., NV Energy
Robert Ott, NV Energy